

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AFFYMETRIX, INC., a Delaware corporation,

Plaintiff,

v.

C.A. No. 07-670 (JJF)

ILLUMINA, INC., a Delaware corporation,

Defendant.

**PLAINTIFF AFFYMETRIX, INC.'S REPLY TO
DEFENDANT ILLUMINA, INC.'S COUNTERCLAIMS**

Plaintiff Affymetrix, Inc. ("Affymetrix"), through its undersigned counsel, for its Reply to Defendant Illumina, Inc.'s ("Illumina") Counterclaims, states as follows:

First Counterclaim (Declaratory Judgment Regarding the '723 Patent)

55. Illumina realleges and incorporates by reference the allegations contained in Paragraphs 1-54 of its Answer.

ANSWER: Affymetrix denies the allegations of paragraphs 1-54 of Illumina's Answer.

56. An actual controversy exists between Illumina and Affymetrix as to whether the '723 patent is invalid and not infringed by Illumina.

ANSWER: Affymetrix admits that an actual controversy exists between Illumina and Affymetrix as to whether the '723 patent is invalid and not infringed by Illumina, but denies that the '723 patent is invalid and not infringed by Illumina.

57. A judicial declaration is necessary and appropriate so that Illumina may ascertain its rights as to whether it infringes the '723 patent, and whether the '723 patent is invalid.

ANSWER: Affymetrix admits that a judicial declaration is appropriate as to whether Illumina infringes the '723 patent and whether the '723 patent is invalid. Affymetrix denies the remaining allegations of paragraph 57.

58. Illumina does not infringe, and has never infringed, any valid or enforceable claim of the '723 patent either directly, contributorily, or by inducement.

ANSWER: Affymetrix denies the allegations of paragraph 58.

59. The '723 patent is invalid for failure to comply with at least one or more of 35 U.S.C. §§ 102, 103 and 112.

ANSWER: Affymetrix denies the allegations of paragraph 59.

Second Counterclaim (Declaratory Judgment Regarding the '320 Patent)

60. Illumina realleges and incorporates by reference the allegations contained in Paragraphs 1-54 of its Answer.

ANSWER: Affymetrix denies the allegations of paragraphs 1-54 of Illumina's Answer.

61. An actual controversy exists between Illumina and Affymetrix as to whether the '320 patent is invalid and not infringed by Illumina.

ANSWER: Affymetrix admits that an actual controversy exists between Illumina and Affymetrix as to whether the '320 patent is invalid and not infringed by Illumina, but denies that the '320 patent is invalid and not infringed by Illumina.

62. A judicial declaration is necessary and appropriate so that Illumina may ascertain its rights as to whether it infringes the '320 patent, and whether the '320 patent is invalid.

ANSWER: Affymetrix admits that a judicial declaration is appropriate as to whether Illumina infringes the '320 patent and whether the '320 patent is invalid. Affymetrix denies the remaining allegations of paragraph 62.

63. Illumina does not infringe, and has never infringed, any valid or enforceable claim of the '320 patent either directly, contributorily, or by inducement.

ANSWER: Affymetrix denies the allegations of paragraph 63.

64. The '320 patent is invalid for failure to comply with at least one or more of 35 U.S.C. §§ 102, 103 and 112.

ANSWER: Affymetrix denies the allegations of paragraph 64.

Third Counterclaim (Declaratory Judgment Regarding the '169 Patent)

65. Illumina realleges and incorporates by reference the allegations contained in Paragraphs 1-54 of its Answer.

ANSWER: Affymetrix denies the allegations of paragraphs 1-54 of Illumina's Answer.

66. An actual controversy exists between Illumina and Affymetrix as to whether the '169 patent is invalid and not infringed by Illumina.

ANSWER: Affymetrix admits that an actual controversy exists between Illumina and Affymetrix as to whether the '169 patent is invalid and not infringed by Illumina, but denies that the '169 patent is invalid and not infringed by Illumina.

67. A judicial declaration is necessary and appropriate so that Illumina may ascertain its rights as to whether it infringes the '169 patent, and whether the '169 patent is invalid.

ANSWER: Affymetrix admits that a judicial declaration is appropriate as to whether Illumina infringes the '169 patent and whether the '169 patent is invalid. Affymetrix denies the remaining allegations of paragraph 67.

68. Illumina does not infringe, and has never infringed, any valid or enforceable claim of the '169 patent either directly, contributorily, or by inducement.

ANSWER: Affymetrix denies the allegations of paragraph 68.

69. The '169 patent is invalid for failure to comply with at least one or more of 35 U.S.C. §§ 102, 103 and 112.

ANSWER: Affymetrix denies the allegations of paragraph 69.

Fourth Counterclaim (Declaratory Judgment Regarding the '424 Patent)

70. Illumina realleges and incorporates by reference the allegations contained in Paragraphs 1-54 of its Answer.

ANSWER: Affymetrix denies the allegations of paragraphs 1-54 of Illumina's Answer.

71. An actual controversy exists between Illumina and Affymetrix as to whether the '424 patent is invalid and not infringed by Illumina.

ANSWER: Affymetrix admits that an actual controversy exists between Illumina and Affymetrix as to whether the '424 patent is invalid and not infringed by Illumina, but denies that the '424 patent is invalid and not infringed by Illumina.

72. A judicial declaration is necessary and appropriate so that Illumina may ascertain its rights as to whether it infringes the '424 patent, and whether the '424 patent is invalid.

ANSWER: Affymetrix admits that a judicial declaration is appropriate as to whether Illumina infringes the '424 patent and whether the '424 patent is invalid. Affymetrix denies the remaining allegations of paragraph 72.

73. Illumina does not infringe, and has never infringed, any valid or enforceable claim of the '424 patent either directly, contributorily, or by inducement.

ANSWER: Affymetrix denies the allegations of paragraph 73.

74. The '424 patent is invalid for failure to comply with at least one or more of 35 U.S.C. §§ 102, 103 and 112.

ANSWER: Affymetrix denies the allegations of paragraph 74.

Fifth Counterclaim (Declaratory Judgment Regarding the '666 Patent)

75. Illumina realleges and incorporates by reference the allegations contained in Paragraphs 1-54 of its Answer.

ANSWER: Affymetrix denies the allegations of paragraphs 1-54 of Illumina's Answer.

76. An actual controversy exists between Illumina and Affymetrix as to whether the '666 patent is invalid and not infringed by Illumina.

ANSWER: Affymetrix admits that an actual controversy exists between Illumina and Affymetrix as to whether the '666 patent is invalid and not infringed by Illumina, but denies that the '666 patent is invalid and not infringed by Illumina.

77. A judicial declaration is necessary and appropriate so that Illumina may ascertain its rights as to whether it infringes the '666 patent, and whether the '666 patent is invalid.

ANSWER: Affymetrix admits that a judicial declaration is appropriate as to whether Illumina infringes the '666 patent and whether the '666 patent is invalid. Affymetrix denies the remaining allegations of paragraph 77.

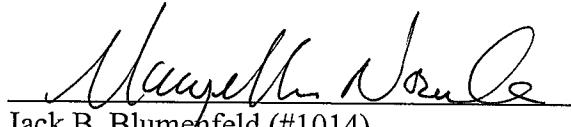
78. Illumina does not infringe, and has never infringed, any valid or enforceable claim of the '666 patent either directly, contributorily, or by inducement.

ANSWER: Affymetrix denies the allegations of paragraph 78.

79. The '666 patent is invalid for failure to comply with at least one or more of 35 U.S.C. §§ 102, 103 and 112.

ANSWER: Affymetrix denies the allegations of paragraph 79.

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January 7, 2008

CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2008 I electronically filed the foregoing with the Clerk of the Court using CM/ECF, which will send notification of such filing to:

Richard K. Herrmann, Esquire
MORRIS JAMES LLP

I further certify that I caused to be served copies of the foregoing document on January 7, 2008 upon the following in the manner indicated:

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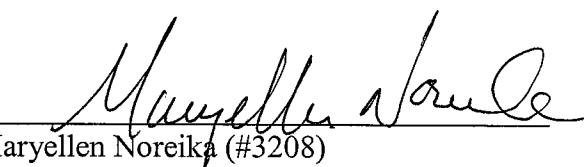
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